



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 27, 1998

Mr. Robert D. Andron
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR98-0816

Dear Mr. Andron:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114002.

The City of El Paso (the "city") received a request for documents involving street repairs on a specified street during a specified period of time. You assert that the information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governing body is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

Litigation cannot be regarded as "reasonably anticipated" unless there is concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982). This office has concluded that litigation is reasonably anticipated when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, and when a requestor hires an attorney who

threatens to sue a governmental entity. Open Records Decision Nos. 555 (1990), 551 (1990). However, the fact that an individual has hired an attorney or that a request for information was made by an attorney does not, without more, demonstrate that litigation is reasonably anticipated. Open Records Decision No. 361 (1983) at 2. In this instance, the requestor does not represent himself as an attorney and you only state that the individual has filed a claim.

However, you have submitted a handwritten note dated January 7, 1998, from the requestor specifying the information requested. In Open Records Decision No. 638 (1996), this office held that a governmental body could establish that litigation is reasonably anticipated for purposes of chapter 552 of the Government Code if it received a notice of claim which it represented to this office complies with the applicable statute or municipal ordinance. You have not made such a representation to this office, in fact you maintain that it does not meet those requirements. We therefore conclude that you have not established that litigation is reasonably anticipated in this matter, and the department therefore may not withhold the requested information under section 552.103(a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', written over a horizontal line.

Janet I. Monteros
Assistant Attorney General
Open Records Division

Ref.: ID# 114002

Enclosures: Marked documents

cc: Mr. Antonio Ruiz III
8500 Arboleda
El Paso, Texas 79907
(w/o enclosures)